

REMARKS

Reconsideration and allowance of the pending claims, as amended, in light of the remarks presented herein are respectfully requested. The Examiner will refer to the attached substitute specification. A detailed recitation of Applicant's responses to the Examiner's specific comments is below.

Examiner Phone Conference

The undersigned thanks the Examiner for the most helpful telephonic conference that was conducted on July 29, 2004. The present response is submitted pursuant to those discussions.

Objections to the Disclosure

The Examiner has objected to the specification under 37 CFR 1.163 and 35 USC §112.

The following are the Examiner's specific objections, and Applicant's corresponding amendments made in the attached substitute specification and abstract.

A. The Examiner has objected to the disclosure under 37 CFR 1.121 (e) for failing to state the Latin name of the genus and species of the plant claimed at the beginning of the specification and preceded by the heading set forth in 37 CFR 1.163(c)(4). Accordingly, new Paragraph 0001 of the enclosed substitute specification recites the botanical name including the Latin name of the genus and species (*Prunus domestica*) and market class "French-type" as well as the varietal denominations of the claimed plant.

B. The Examiner has objected to the disclosure for failing to refer to cultivar names within single quotation marks under the convention employed by the International Code of Botanical Nomenclature. Accordingly, all cultivar names have been so amended in the substitute specification.

C. The Examiner has objected to the disclosure for not specifically stating the pollination requirements of the instant tree. This is stated in Paragraph 0069 of the substitute specification.

D. The Examiner has objected to the disclosure for failing to clearly state the differences between the claimed plant and the pollen parent 'Tulare Giant.' This is stated in Paragraph 0010 of the substitute specification.

E. The Examiner objected to the heading for the "Brief Description of the Photographs." Per the Examiner's request, this heading has been modified to read "Brief Description of the Drawings."

F. Per the Examiner's request, the captions provided for the drawings on page 3, lines 13 and 15 (see Paragraphs 0011 and 0012 of the substitute specification) have been replaced with figure numbers (FIG. 1 and 2).

G. The Examiner has requested that patent status of the rootstock cultivars 'Marianna' and 'Myrobalan' be clarified. Paragraphs 0006 and 0007 of the substitute specification now recite the patent status of both varieties.

H. The Examiner has requested that the color ranges specified on pages 5 and 8 be clarified to name individual color fans rather than a range. Accordingly, Paragraphs 0016 and 0028 of the substitute specification have been amended to recite individual color fans only, rather than the endpoints of a range of color fans.

I. The Examiner has requested that any additional information regarding disease susceptibility be set forth in the specification. Paragraph 0072 of the substitute specification now recites additional information on disease susceptibility of the claimed plant.

J. The Examiner has requested that the observed fruit weight be imported into the specification. Accordingly, Paragraph 0008 of the substitute specification now recites the observed fruit weight.

K. A statement regarding the stability of observed traits of the new plant in succeeding propagules has been added in Paragraph 0006.

Claim Rejection - 35 U.S.C. § 112, 1st and 2nd Paragraphs

The Examiner has rejected claim 1 under 35 U.S.C. § 112, first and second paragraphs, as not being supported by a clear and complete botanical description of the plant for reasons set forth in the "Objection to the Disclosure." As detailed above, Applicant has fully and completely responded to each and every objection raised by the Examiner. As such, this rejection is now moot. Applicant respectfully requests that the Examiner withdraw the rejection of claim 1 under 35 U.S.C. § 112, first and second paragraphs.

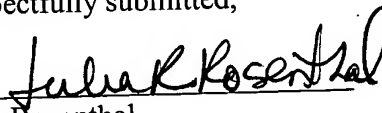
In view of the above, the presently pending claim in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding objections to the specification and rejection of the claim and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

The amendment of the claim is not to be construed as a dedication to the public of any of the subject matter of the claim as previously presented.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **514112900300**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: August 4, 2004

Respectfully submitted,

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